

**Summary of the Chairman's First Modification¹ to the Chairman's Mark
of a Bill to Prevent Identity Theft and Tax Refund Fraud
April 18, 2016**

Modifications to the Chairman's Mark

1. Modification to require the IRS to prepare a report on identity theft refund fraud

The Chairman's mark requires the IRS to prepare five bi-annual reports on various issues related to identity theft refund fraud. The Chairman's modification adds to the information required in the IRS's reports the following:

- Information on both the average and maximum amounts of time that elapsed before victims' cases were resolved;
- An assessment of the IRS's progress on identity theft outreach and education to the private sector, state agencies, and external organizations; and
- A feasibility study on the costs and benefits to enhancing its taxpayer authentication approach to the electronic tax return filing process.

2. Modification of criminal penalty for misappropriating taxpayer identity in connection with tax fraud

The Chairman's mark makes it a felony to use a stolen identity to file any tax return or other document. It also expresses the sense of the Senate that this crime be added to the list of predicate offenses in the Aggravated Identity Theft Statute. The Chairman's modification adds theft of an identity protection personal identification number ("IP PIN") in order to file a tax return or other document as a felony crime under the tax code. It also expresses the sense of the Senate that it be added to the list of predicate offenses contained in the Aggravated Identity Theft Statute.

3. Modification to authority to transfer IRS appropriations to combat tax fraud

The Chairman's mark provides that certain monies appropriated to the IRS may be transferred to other IRS accounts solely for the purpose of preventing, detecting, and resolving potential cases of tax fraud. The Chairman's modification clarifies that preventing tax fraud includes educating taxpayers about scams that target them and providing information about how they can protect themselves.

4. Modification to taxpayer notification of suspected identity theft

The Chairman's mark provides that a taxpayer be notified and provided certain information if the Secretary determines that there may have been an unauthorized

¹ In aggregate, the provisions in the Chairman's mark (that reflect the First and Second Modifications) raise less than \$500,000 over the 10-year budget window. See JCX-29-16 for the detailed revenue estimate.

use of the taxpayer's identity or that of the taxpayer's dependents. The Chairman's modification provides that the notification include instructions to the taxpayer about filing a police report and the forms the taxpayer must submit to allow investigating law enforcement officials to access the taxpayer's personal information.

5. Modification to enhancements to the IRS PIN program

The Chairman's mark requires the Secretary to issue an IP PIN to any individual requesting protection from identity theft-related tax fraud after the individual's true identity has been established and verified. The provision is required to be available on a nation-wide basis by July 1, 2018. In order to provide additional time for the IRS to enhance its security measures to better protect sensitive taxpayer information, the Chairman's modification delays the requirement by one year so that the IP PIN program is available on a nation-wide basis by July 1, 2019.

6. Modification to increase electronic filing of returns

The Chairman's mark provides for a phased reduction in the threshold requirement that taxpayers have an obligation to file a specified number of returns and statements during a calendar year in order to be subject to a regulatory mandate. This reduction is proposed to begin in calendar year 2018. In order to provide additional time for the IRS to enhance its security measures to better protect sensitive taxpayer information, the Chairman's modification delays the dates for the phased reduction in the threshold requirement by one year so that the phased reduction begins in calendar year 2019.

The Chairman's mark provides that the proposal is effective for returns with a due date, determined without regard to extensions, after December 31, 2016. The Chairman's modification delays the effective date of the proposal by one year so that it is effective for returns with a due date, determined without regard to extensions, after December 31, 2017.

7. Modification to internet platform for Form 1099 filings

The Chairman's mark requires the Secretary to make available, by January 1, 2020, an internet website or other electronic medium to allow taxpayers to prepare, file, and distribute Forms 1099, and create and maintain taxpayer records. It also requires that the website be available, by January 1, 2018, in a partial form that will allow taxpayers to prepare, file, and distribute Forms 1099-MISC. In order to provide additional time for the IRS to enhance its security measures to better protect sensitive taxpayer information, the Chairman's modification delays the proposal by one year, so that the website is required to be available by January 1, 2021, and in a partial form by January 1, 2019.

8. Modification to requirement that electronically-prepared paper returns include a scannable code

The Chairman's mark requires that taxpayers who prepare their tax returns electronically but print and file the returns on paper must print their returns with a scannable code. The requirement is effective for tax returns with a due date, determined without regard to extensions, after December 31, 2016. The Chairman's modification delays the effective date by one year so that the requirement is effective for tax returns with a due date, determined without regard to extensions, after December 31, 2017.

9. *Modification to streamlined critical pay authority for information technology positions*

The Chairman's mark reinstates streamlined critical pay authority at the IRS to certain designated information technology positions for a period starting on the date of enactment through September 30, 2020. The Chairman's modification extends the reinstatement of such authority for one year, so that it would apply for a period starting on the date of enactment through September 30, 2021.

Additions to the Chairman's Mark

1. *Require the IRS to report on the status of the Refund Fraud Information Sharing and Assessment Center ("ISAC")*

The IRS, State tax administrators, and industry groups, including tax preparation firms, software firms, and payroll and tax financial product processors, are working to establish a Refund Fraud ISAC to more efficiently allow and provide for the exchange of information among these public and private sector groups under a legal structure about security breaches, identity theft, and refund fraud. The provision requires the IRS to report on whether the ISAC is fully operational and, if not, what additional steps are necessary for it to be operational and the best estimate of when the ISAC will be operational. It also requires the IRS to report on what challenges remain in the effective sharing of information and steps that are being taken to address those challenges.

The provision is effective on the date of enactment. The report is to be submitted to the Senate Finance Committee and House Ways and Means Committee no later than 90 days after the date of enactment.

2. *Require the Government Accountability Office ("GAO") to prepare various reports on identity theft and tax refund fraud*

The provision requires the GAO to prepare a report evaluating the IRS's progress on identity theft outreach and education to the private sector, state agencies, and external organizations. The provision also requires the GAO to prepare a report evaluating the IRS's feasibility study on the costs and benefits to enhancing its taxpayer authentication approach to the electronic tax return filing process. These

reports are to be submitted to the Senate Finance Committee and House Ways and Means Committee by September 30, 2020.

In addition, the provision requires the GAO to prepare a report evaluating the clarity of the language the IRS uses for notifying taxpayers of instances of potential and known tax-related identity theft refund fraud and the IRS systems that generate tax-related identity theft notifications. The report is to be submitted to the Senate Finance Committee and House Ways and Means Committee by September 30, 2018.

The provision is effective on the date of enactment.

3. *Sense of the Senate to express support for strengthened penalties and enforcement for impersonating an IRS official or agent*

Under present law, section 912 of Title 18 provides that it is a Federal crime to impersonate an officer or employee of any Federal agency in an attempt to obtain money or anything of value. Such impersonation is punishable by a fine, imprisonment for up to three years, or both. The provision expresses the sense of the Senate that penalties for impersonating an IRS official or agent should be increased and enforced to the fullest extent of the law.

Deletions from the Chairman's Mark

The Chairman's modification removes the following provisions from the Chairman's mark because the provisions, or substantially similar provisions, were recently enacted into law:

1. Extend the authority to require a truncated Social Security Number ("SSN") on Form W-2;
2. Modify due dates for filing certain information returns;
3. Safe harbor for *de minimis* errors on information returns, payee statements, and withholding; and
4. Clarify the use of credentials by Enrolled Agents.